

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 06-0363**  
**Gross Income Tax**  
**For Tax Years 2001-02**

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**ISSUE**

**I. Gross Income Tax—Rate of Taxation.**

**Authority:** IC § 6-8.1-5-1; 45 IAC 1.1-1-8; 45 IAC 1.1-2-2; 45 IAC 1.1-2-4.

Taxpayer protests that certain income should be taxed at the low rate.

**STATEMENT OF FACTS**

Taxpayer is an Illinois-domiciled manufacturer of sporting and leisure equipment and supplies, doing business in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for gross income tax for the tax years 2001 and 2002. The gross income tax was repealed, effective January 1, 2003. All Indiana code and regulation references are as they were in effect during the years at issue. Taxpayer protests that its Indiana-sourced gross income should be subject to the low rate, rather than the high rate. Further facts will be supplied as required.

**I. Gross Income Tax—Rate of Taxation.**

**DISCUSSION**

Taxpayer protests that some of its Indiana-sourced gross income for the tax years 2001 and 2002 should be subject to the low rate of gross income tax, rather than the high rate. Taxpayer provided calculations and amounts it believes were subject to the high rate and to the low rate. The Department notes that IC § 6-8.1-5-1(c) places the burden of proving a proposed assessment wrong upon Taxpayer.

The Department's report explained that the taxpayer's reported gross income tax liability was evaluated and determined to be under-reported for the first two years of the audit period. Adjustments were proposed in accordance with 45 IAC 1.1-1-8, to recognize the taxpayer's high

rate Indiana receipts and to reduce these receipts by the \$1,000 exemption. 45 IAC 1.1-1-8 stated:

- (a) Except as provided in subsection (b), "discount" means the reduction in the purchase price of an item customarily granted by a seller and taken by a buyer in consideration of prompt payment of an invoice.
- (b) The term does not include the following:
  - (1) A purchase which requires an additional activity or condition to be fulfilled before the reduction in purchase price will be granted.
  - (2) A patronage dividend.
- (c) A discount may be allowed where expenses of the purchaser tied to the sale, such as freight charges or delivery charges, are paid by the seller to complete the sale. However, what is otherwise an expense of the seller cannot be changed to look like a discount to escape being included in gross income.

No explanation of why 45 IAC 1.1-1-8 was applicable was provided in the report.

Income subject to gross income tax at the low rate was defined by 45 IAC 1.1-2-2, which stated:

- (a) Except as provided in subsection (b), taxable gross income from the following business transactions is subject to a tax rate of three-tenths of one percent (0.3[percent]):
  - (1) Retail and wholesale sales.
  - (2) Display advertising, except for receipts from the sale or rental of property or from the rendering of professional services in connection with such advertising.
  - (3) Dry cleaning and laundering service, except for coin operated laundry and dry cleaning equipment.
  - (4) The rental of water softening and conditioning equipment, including exchanging tanks in the ordinary course of business, but excluding plumbing work incidental to the installation of water softening and conditioning tanks.
  - (5) The rental of rooms, lodgings, booths, display spaces, banquet facilities, and other such accommodations for periods of less than thirty (30) days at a location where such accommodations are regularly furnished for a consideration.
  - (6) The business of commercial printing that results in printed materials, excluding the business of photocopying.
- (b) The low rate of tax provided by subsection (a) is not available to a taxpayer that fails to separate such gross income from all other income in the taxpayer's records and on the taxpayer's return. Also, the low rate of tax does not apply to gross income from a wholesale sale described in IC 6-2.1-2-5.

Income subject to gross income tax at the high rate was defined by 45 IAC 1.1-2-4, which stated:

- (a) Taxable gross income from the following business transactions is subject to a tax rate of one and two-tenths percent

(1.2[percent]):

- (1) Producing, transmitting, furnishing, wholesaling, or retailing:
  - (A) electrical energy; or
  - (B) artificial gas, natural gas, or a mixture of the two (2) gases.
- (2) Operating:
  - (A) a steam or electric railway, street car line, motor vehicle, steam or motorboat, or any other vehicle for the transportation of freight or passengers;
  - (B) a pipeline for the transportation of any commodity;
  - (C) a telephone or telegraph line;
  - (D) a water or sewerage system; or
  - (E) any other utility not specifically described in this subdivision.
- (3) Activities described in IC 6-2.1-1-3 through IC 6-2.1-1-9.
- (4) Any activity not specifically described in section 2 of this rule, including the following:
  - (A) The provision of services of any character.
  - (B) The sale of real estate.
  - (C) Rentals.
  - (D) The performance of contracts.
  - (E) The investment of capital.
  - (F) The sale of a capital asset.
  - (G) The provision of cable television.
  - (H) The extension of credit.

(b) If a taxpayer fails to separate, in its records and on its tax return, the gross income subject to the high rate from the gross income subject to the low rate, the taxpayer's entire gross income is subject to the rate imposed by subsection (a).

As part of this protest, Taxpayer submitted documentation which establishes that a portion of its Indiana sales were subject to the high rate and a portion were subject to the low rate of gross income tax, as described in 45 IAC 1.1-2-2(a)(1). The protest file contains no information which would explain why 45 IAC 1.1-1-8 would apply in this instance. Taxpayer's calculations of gross income subject to the high rate and subject to the low rate are correct.

### **FINDING**

Taxpayer's protest is sustained.

WL/LS/DK October 15, 2007.